

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 29, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

PONCIANO ALVAREZ-ALVAREZ,

Defendant.

NO: 2:12-CR-121-RMP-4

ORDER OF DISMISSAL

BEFORE THE COURT is a Motion to Dismiss the Superseding Indictment by the Government, ECF No. 239, with respect to Defendant Ponciano Alvarez-Alvarez without prejudice pursuant to Fed. R. Crim. P. Rule 48(a). Defendant has not appeared in this matter.

The district court's discretion to deny an uncontested motion to dismiss under Rule 48(a) is tightly constrained, if it exists at all. *See Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977) (per curiam) (reserving judgment on the question of whether a district court has any discretion to deny an uncontested motion to dismiss under Rule 48(a)); *United States v. Garcia-Valenzuela*, 232 F.3d

1 1003, 1008 (9th Cir. 2000); *United States v. Gonzalez*, 58 F.3d 459, 462 (9th Cir.
2 1995). The only circumstance that the Ninth Circuit has thus far articulated as a
3 basis to reject an uncontested motion to dismiss without prejudice from the
4 government is when the prosecution's reasons for dismissal are "clearly contrary to
5 manifest public interest." *Gonzalez*, 58 F.3d at 461.

6 The Court has reviewed the docket in this matter and does not find an
7 indication that dismissal without prejudice under Rule 48(a) contravenes the
8 "manifest public interest." *See Gonzalez*, 58 F.3d at 461.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The Government's Motion to Dismiss Pursuant to Rule 48(a), **ECF**
11 **No. 239**, is **GRANTED**.

12 2. The Superseding Indictment, ECF No. 59, is **dismissed without**
13 **prejudice as to Defendant Ponciano Alvarez-Alvarez**.

14 3. Any pending motions are **denied as moot** and all upcoming deadlines
15 and hearings are **vacated**.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order and provide copies to counsel.

18 **DATED** January 29, 2021.

19
20 s/ Rosanna Malouf Peterson
21 ROSANNA MALOUF PETERSON
United States District Judge